

1 State of New Hampshire Banking Department

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3 In re the Matter of:) Case No.: 07-216
4 State of New Hampshire Banking)
5 Department,)
6 Complainant,) Order on Respondents' Motion to
7 and) Reconsider the Order on Petitioner's
8 American Home Mortgage Corp, Michael) Motion to Amend the Petition and to
9 J. Strauss, Stephen A. Hozie, Alan B.) Reinstate the Request to File Briefs
10 Horn, and American Home Mortgage)
11 Holdings, Inc.,)
12 Respondent

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15 HISTORY

16 An Order to Show Cause was issued in this case by the Commissioner on
17 August 2, 2007. Petitioner omitted reference to RSA 397-A:10, which is
18 implemented by New Hampshire Administrative Rule BAN 2407.01.

19 On October 17, 2007 the Commissioner granted Petitioner's Motion to
20 Amend the Petition after the hearing to allow an opportunity to re-litigate
21 the matter due to the omission of reference to RSA 397-A:10 in the initial
22 Order to Show Cause and Staff Petition. This was after the Commissioner's
23 October 15, 2007 issued order requiring both Petitioner and Respondents to
24 file briefs on two issues: one concerning whether the Order to Show Cause and
25 Staff Petition must mention the particular RSA implemented by the BAN Rule,

1 and if the inclusion of the RSA is required, whether mention of RSA 397-A:5
2 alone is sufficient.

3 On October 22, 2007, Respondents filed a motion to reconsider the order
4 on Petitioner's Motion and to reinstate the request to file briefs.

5 **STATUTORY AUTHORITY**

6 Fair notice of the issues to be addressed at the hearing is a basic
7 requirement of the New Hampshire Administrative Procedure Act, RSA 541-A:31,
8 III (c). Petitioner did reserve the right to amend the Staff Petition, which
9 accompanies the Order to Show Cause, and to request that the Commissioner
10 take additional administrative action.

11 **ORDER**

12 Since the time to amend has not been limited, Petitioner is not
13 precluded from amending the Order to Show Cause and the accompanying Staff
14 Petition.

15 However, based on review of Respondents' Motion To Reconsider, fair
16 notice can be met through each party's filed briefs on the aforementioned
17 issues. Therefore, it is this 28th day of November, 2007 ORDERED:

- 18 1. That the Order on Petitioner's Motion to Amend the Petition dated
19 October 17, 2007, be vacated;
- 20 2. That the Presiding Officer's request to File Briefs dated October 15,
21 2007, be reinstated so that the parties may be permitted to file the
22 requested briefs.
- 23 3. The such briefs shall be due December 14, 2007.
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25 /s/
Maryam Torben-Desfosses
Presiding Officer

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4 FINDING THE ABOVE ORDER ON ORDER ON RESPONDENTS' MOTION TO RECONSIDER THE
5 ORDER ON PETITIONER'S MOTION TO AMEND THE PETITION AND TO REINSTATE THE
6 REQUEST TO FILE BRIEFS CONTAINED THEREIN TO BE IN THE PUBLIC INTEREST IT IS;
7 SO ORDERED

8 This 28th day of November, 2007.

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11 /s/
12 Peter Hildreth,
13 Bank Commissioner
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